

**IN THE HIGH COURT OF SINDH, KARACHI**

**Constitutional Petition No.D-871 of 2023**

*[Ghulam Nabi and 12 others versus the Province of Sindh and another]*

Before:

**Justice Muhammad Karim Khan Agha**

**Justice Adnan-ul-Karim Memon**

Mr. Malik Altaf Hussain, advocate for the petitioners.

Mr. Ali Safdar Depar, AAG

**Date of hearing & Judgment: 16.9.2025**

**J U D G M E N T**

**Adnan-ul-Karim Memon, J.** Petitioner has filed this Constitutional Petition with the following prayer: -

- i) *To hold and declare that the failure of the Respondent No.2 to accept the files of the Petitioners in term of order dated 28.05.2021, is illegal, unlawful, unconstitutional, malafide and non-est; consequently, to direct the Respondent No.2 to accept the documents of the Petitioners and to allow them to participate in the process as ordered by this Honorable Court.*
- ii) *To initiate contempt proceedings against the Respondent No.2 for willfully and deliberately flouting the orders of this Honorable Court.*
- iii) *Pending adjudication of the Petition, the Respondent No.2 be directed to accept the documents of the Petitioners, as also the Respondents be restrained from taking any coercive action against the Petitioners.*

2. Petitioners were hired as Head Masters/Head Mistresses on a contractual basis after passing a competitive exam and interview conducted by the Institute of Business Administration (IBA). They were led to believe their positions would be permanent. After repeated unsuccessful attempts to have their services regularized, they filed the Constitutional Petition No.D-2431 of 2021 before this Court. However, during the court proceedings in the aforesaid case, it was revealed that the respondents had already requested the Sindh Public Service Commission (SPSC) to determine the eligibility of contractual Head Masters for regularization. This Court then ordered that the petitioners' cases be sent to the SPSC for regularization. However, despite a subsequent directive from the respondents to all directors of the Education Department to submit the required documents for further process, the petitioners requested that their concerned Directors have their files sent to the SPSC was denied without any justifiable reason. When the petitioners approached the respondents directly, they also refused to comply with this Court order in earlier round of litigation. However, the petitioners have not been given a reason for this refusal, compelling the petitioners to file the caption petition for the aforesaid relief(s).

3. The petitioners' counsel argued that the respondent's refusal to accept their files is illegal and violates their constitutional rights to life (Article 9), equality before law (Article 4), and non-discrimination (Article 25). The counsel claims this is discriminatory because other Head Masters, who were appointed through a different process (NTS), have had their files accepted by the SPSC. The counsel also addressed the respondent's excuse for not considering the petitioners' cases that they were either repatriated to their previous posts in BS-15 or took new positions as JEST/PST. The counsel contended that this is a "frivolous ground" because the court order was clear that all individuals recommended through the IBA process should be re-examined by the SPSC. Furthermore, the counsel noted that the petitioners are now overage and cannot apply for other jobs, and that their repatriation was ordered by the respondents themselves without any warning that it would disqualify them for regularization. Finally, the counsel argued that the respondent's failure to comply with the court order is a contempt of court and that the respondent should be prosecuted. The counsel requested that this Petition be allowed.

4. The Assistant Advocate General (AAG) opposed the petition, stating that the petitioners' appointments were always intended to be temporary and were based on an annual contract. He submitted that the service files of 866 out of 937 eligible candidates were sent to the SPSC for regularization in BS 17. The AAG claimed that the petitioners were part of the remaining group who were either repatriated at their own request from higher posts (HST) in BS-15 or voluntarily left their jobs as such; their case cannot be sent to SPSC at this stage. The AAG, therefore, requested that the petition be dismissed.

5. We have heard learned counsel for the parties and considered the record with their assistance.

6. The question for determination is whether the refusal of Respondent No.2 to accept the petitioners' documents and allow them to participate in the competitive process through SPSC, despite a previous court order dated May 28, 2021, constitutes an illegal, unlawful, and malicious act, and if so, whether this justifies holding Respondent No.2 in contempt of court and directing them to comply with the previous order? And whether SPSC can assess the suitability of the petitioners who were appointed on contract basis.

7. In service law, positions/posts are either temporary (time-limited) or permanent (not time-limited). There is no legal recognition of a "contract post" under the law as a separate category. The Government of Sindh is, therefore, required to follow standard Recruitment procedures for all appointments in basic scales on regular basis, as appointments on a contract basis have been repeatedly

criticized and ruled against by the Superior Court. The Supreme Court has also addressed issues related to discriminatory treatment and the regularization of contract or daily-wage workers and clarified the rights of temporary employees and the conditions under which they may attain permanent status. Numerous Supreme Court decisions are available to be cited on the aforesaid proposition.

8. Further on the subject issue, appointments to public office, particularly for posts in BPS-1 to BPS-15, must be transparent, merit-based, and made through a competitive process. While legal quotas are permissible subject to the decision of the Supreme Court on the issue, the Sindh Government must make these appointments on a regular, open-merit basis with proper budgetary approval. This direction shall not be ignored by the Chief Secretary and Secretaries of the different departments of Government of Sindh as this practice of making permanent public appointments on a contract or ad-hoc basis is not appreciated by this Court in the case of Shahnawaz and 36 others v. Province of Sindh & 04 others (2023 PLC (CS) 447), except for specific exceptions outlined in the Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974. This principle is a well-established legal precedent, supported by numerous Supreme Court decisions.

9. Adding that the Sindh Civil Servants Act, 1973, distinguishes between regular and ad hoc / contract appointments. Section 2(1)(a) defines an "ad hoc appointment" as one made outside the prescribed recruitment method, while Section 2(1)(b) explicitly excludes contract and work-charged employees from being considered civil servants, meaning they do not get the same benefits or protections as permanent staff. Section 5 mandates that all appointments must follow a formal, rules-based process. Additionally, Section 9 dictates that promotions are based on merit or seniority-cum-fitness. These sections collectively form the legal basis for opposing the regularization of temporary employees without a proper competitive process.

10. The Sindh Civil Servants (Appointment, Promotion & Transfer) Rules, 1974, supplement the main Act and provide procedural details for appointments. Rule 3 states that posts are filled through either promotion/transfer or initial appointment. Rule 6-A establishes a separate Provincial Selection Board for promotions and higher-level appointments (BPS-18 and above), including a provision for the Chief Minister to head the board for BPS-20 and higher posts. This mechanism for promotions is distinct from the SPSC's role in initial recruitment in BS 16 and above. The SPSC does not assess the suitability of contract employees for regularization. Its sole function, as defined by Section 8 of the Sindh Public Service Commission Act, 2022, is to conduct competitive examinations and tests for the initial appointment of candidates to permanent

government posts. This establishes the SPSC as the primary authority for ensuring transparent and merit-based hiring, not for converting temporary or contract positions into permanent ones.

11. However in the present case, the recruitment rules for the position of Head Masters/Headmistresses (BPS-17) in Sindh show surprisingly contractual positions. The post of Head Master/Headmistress in BPS-17 can be filled through a competitive process and by promotion on seniority-cum-fitness basis with certain qualifications and experience. We do not see any logic to take the aforesaid posts out of the purview of the SPSC and to fill the same on a contract basis. Admittedly, the petitioners have not been declared as successful candidates by SPSC; therefore, they cannot claim an appointment for the said post on a contract basis as a matter of right for an indefinite period. Master/Head Mistress in BPS-17 cannot be relaxed under the Recruitment Rules.

12. In the earlier round of litigation in Constitutional Petition No. D- 2839 of 2017, this Court vide order dated 19.01.2021 noted that the learned AAG filed a fresh compliance report dated 18.01.2021. The stance of the learned AAG was that the committee viewed the recruitment process, suffering from various defects and legal flaws, and thus suggested for four months to initiate the recruitment process afresh through a competitive process, i.e., SPSC. In the meantime, he prayed for the retention of incumbents' Head Masters/Head Mistresses on their respective posts on the ground that there was an order in operation obtained by concealment of facts of the case. However, we did not appreciate the request for a month's extension in light of the order and reason assigned. During arguments in the aforementioned case, we were apprised of the fact that fresh recruitment rules had been notified, and the respondent department was directed to act strictly in accordance with the law to fill the subject posts through the competitive process and they are directed to allow the incumbents Head Masters/Head Mistresses to participate in the said process without discrimination, subject to all just exceptions as provided under the law and complete the same process within two months strictly in pursuance of law and to submit the compliance report to this Court.

13. The Supreme Court in the case of Shahzad Shahmir and others v. Government of Sindh & others (2021 SCMR 824), dismissed the petitions of Headmasters (BPS-17) who were appointed on contract; that Appointments to BPS-17 posts must be made through the SPSC as per Article 242 of the Constitution, and not on a contractual basis. Due to the illegality of the appointments, the Supreme Court ruled that the petitioners had no right to their employment and dismissed their case. The Supreme Court also noted that the High Court had extended some benefits to the petitioners, even though they were not legally entitled to them. Since the order passed by this court was not set aside

as such, the observation recorded in this case shall be kept in mind by the department while scrutinizing their case afresh.

14. The Supreme Court of Pakistan in the case of Ali Azhar Khan Baloch v. Province of Sindh (2015 SCMR 456) has held at paragraph No 198 as under:-

*“The Sindh Government and or the Competent Authority cannot bypass this mandatory requirement and substitute a parallel mechanism to appoint a person in BS.16 to 22 against the language of these Rules, which are framed under the dictates of the Act as mandated under Article 240 of the Constitution. Article 242 of the Constitution provides the mechanism for the appointment of a Civil Servant through the Public Service Commission. This Article is a safety valve that ensures the transparent process of induction in the Civil Service. It provides appointment by the Public Service Commission with the sole object that meritorious candidates join the Civil Service. The Sindh Government, through executive or legislative instruments, cannot withdraw any post from the purview of the Public Service Commission as has been done in the case of the petitioners, in negation to the command of Article 242 of the Constitution. For the aforesaid reasons, we hold that the Sindh Government shall make all the appointments in BS 16 to 22 through the Public Service Commission.”*

15. In view of the foregoing legal position, we are of the considered view that the Government having the domain to frame the policy of appointment and also by law, provide the qualification for appointment against a particular post and thus, appointment against such post through initial appointment or otherwise cannot be claimed without fulfillment of the criteria and the requisite qualifications as provided under the Recruitment Rules as discussed supra.

16. In view of the Judgments/orders of the Supreme Court in the cases of Ali Azhar Khan Baloch and Shahzad Shamir 2021 SCMR 824 as discussed supra, the Government of Sindh cannot circumvent the law and bypass the directions contained in the aforesaid Judgment/order of the Supreme Court by making appointments in BPS-17 on contract basis, which are required to be filled through a competitive process and regular mode of service.

17. At this stage, Petitioners' counsel cited various case laws and based on this analogy, counsel argued that the petitioners' case for permanent appointment may be referred to the SPSC for a fresh interview according to recruitment rules, which was/is later development as their colleagues have already undergone such competitive process by the order of this Court and the Supreme Court.

18. Drawing an analogy from the present situation and, more importantly, guided by the principles established by the Supreme Court of Pakistan in the cases of Dr. Naveeda Tufail and 72 others v. Government of Punjab and others (2003 SCMR 291) and Shahzad Shahmir supra. The Dr. Naveeda Tufail case shows that the Federal Government regularized ad hoc employees through the Public Service Commission. While the Petitioners, as provincial contract employees, cannot

automatically claim this, Article 25 of the Constitution calls for equal treatment. In Naveeda Tufail's case, the Supreme Court recognized a legitimate expectation of regularization for Punjab's ad hoc lecturers due to continuous ad hoc appointments. The Supreme Court directed the Punjab government to regularize them via the Punjab Public Service Commission, following the Federal model with some concessions, ensuring separate consideration from direct recruits and non-retention of unsuitable candidates. This case highlights the need for fairness and the Public Service Commission's role in regularization. However, the Supreme Court in the case of Shahzad Shahmir held that appointments to BPS-17 under Article 242 of the Constitution must be made by the SPSC, rendering contract appointments to such posts illegal from the outset. Consequently, the petitioners had no legal right to continued employment, as their contract appointments were not in accordance with the law.

19. For the aforesaid reasons and the Supreme Court's upholding of this court's decision in Shahzad Shahmir case, the competent authority of the Respondent Department is directed to forward the cases of interested petitioners to the SPSC for a fresh interview/assessment/suitability for the subject post, if not earlier assessed, within three months from the date of this Judgment. This referral will be based on verification of their qualifications and adherence to the Recruitment Rules, considering the principles in Dr. Naveeda Tufail's and Shahzad Shahmir's cases. In the intervening period, the petitioners will retain their current positions unless they have already vacated them.

20. This petition stands disposed of alongwith listed / pending application(s) in the aforesaid terms.

**JUDGE**

**HEAD OF CONST. BENCHES**